IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CRIMINAL APPLICATION NO.134 OF 2001

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SHANTILAL BALUBHAI CHHOWALA

VERSUS

POLICE INSPECTOR, MAHIDHARPURA POLICE STATION, SURAT

Appearance:
Bharat C Dave, for the Petitioner
for the Respondent

CORAM : MR JUSTICE S.K.KESHOTE
Date of Order : 30/03/2001

C A V JUDGMENT

By this petition under Article 226 of the Constitution of India, the petitioner is praying for the following reliefs:-

"(A) Writ of mandamus or a writ in the nature of mandamus or appropriate writ, direction or order, be issued, directing the respondents to register the complaint in pursuance to the applications dated 9.1.2001 and 12.2.2001 and 23.2.2001 - Annexures 'A', 'B' Collectively and 'E' respectively and also to give proper protection to the petitioner and his family members.

(B) Pending hearing and final disposal of this petition, the respondents may be directed to register the complaint as per the applications at Annexures 'A', 'B' Collectively and 'E' and to immediately give police protection to the petitioner and his family members."

2 The petitioner is a retired Assistant Teacher residing at the address given in the title of the petition in tenanted premises since last many years. It is stated that the original owner of the said premises was the mother of the petitioner and after the death of the mother of the petitioner, the petitioner has become tenant of the said premises and is residing there since then. The petitioner states that he was having only one brother who was also residing with him but his brother's wife and son were residing at Bhavnagar since last many years. The brother of the petitioner died in the month of August 2000. The petitioner states that on 9.1.2001 the nephew of the petitioner, namely, Kaushal had come with two headstrong persons at the above residential premises of the petitioner and had given threats of dire consequences and asked the petitioner and his family members to vacate the premises. The petitioner and his family members were so frightened that they locked the house and had gone to one Bal Mandir which the wife of the petitioner is running since last many years. The petitioner states and submits that when the petitioner and his family members were going to said Bal Mandir the nephew of the petitioner and other two headstrong persons have again given threats of dire consequences and that they would enter into the premises by breaking open the lock. The petitioner therefore gone to Mahidharpura Police Chowkey with his wife Shobhaben and met Mr Patel,

PSI, who was present there. The said PSI Mr Patel asked the petitioner and his wife to go to Mahidharpura Police Station. That the Police Inspector of Mahidharpura Police Station had not given any response tot he petitioner and therefore the petitioner and his wife went to the Commissioner of Police, Surat City, with an application which was inwarded in the Office of the Commissioner of Police. That before registering this complaint dated 9.1.2001 the petitioner and his wife asked for police protection on payment. They were again sent to the Police Station by the office of the Commissioner of Police but no response was given by the Mahidharpura Police Station and therefore in the evening the petitioner and his wife again went to the office of the Commissioner of Police and there the above application dated 9.1.2001 was inwarded in the Office of the Commissioner of Police. The petitioner says that due to the incident of 9.1.2001 as the petitioner and family members were frightened due to threat given by his nephew and other two headstrong persons he along with his family members left Surat and have gone to the house of his brother-in-law at Ukai. That on 27.1.2001 the petitioner and his family members again came to Surat and straightway went to the Police Station but no response was given and therefore they had again gone to Ukai. That on 12.2.2001 the petitioner met the Commissioner of Police, Surat, with a written application and there the petitioner was informed that his application dated 9.1.2001 was sent to the Mahidharpura Police Station for investigation. The Personal Assistant of the Commissioner of Police had asked the petitioner to meet Mr Pandya and said Mr Pandya had sent the petitioner with the police personnel at Mahidharpura Police Station. In spite of this the Police Inspector has not given any response. The petitioner states that after giving the application at Annexure-D collectively the petitioner and his wife again went to Ukai and on 14.2.2001 they have come again to Surat and tried to meet the Commissioner of Police personally. The petitioner could not meet the Commissioner of Police personally on 14.2.2001 and therefore they again went to meet the Commissioner of Police on 15.2.2001. On 15.2.2001 the Commissioner of Police asked the petitioner and his wife to meet the Officer of Range-I, namely, Mr Rabari. The said Mr Rabari had not given any response to the petitioner and therefore they again went to Ukai. On 22.2.2001 the wife of the petitioner and her son had gone to the residential premises and there the nephew of the petitioner, namely, Kaushal and his associates who are the headstrong persons were there and they had given threats to the petitioner's wife and his son and asked them to call the petitioner

for signing the papers which were prepared by them. The petitioner and his wife had gone to Mahidharpura Police Station and submitted an application narrating the incident but that application was not take by the Police Inspector of Mahidharpura Police Station. The petitioner has therefore sent that application on 23.2.2001 by Registered post A.D. in the name of his wife to the Commissioner of Police, Surat City, and also sent the same through fax to the Commissioner of Police on 24.2.2001. Looking to these facts and circumstances the petitioner is approaching this Court for the reliefs as stated hereinabove.

From the facts of the case I find that there appears to be a property disputes between the petitioner and his nephew. In para II (1) the petitioner admitted that the disputed property was of his mother and his mother was owner of the said premises. When the petitioner's mother was owner of the property I fail to see how the petitioner can become tenant of the said premises. On the death of his mother, if there would not have been testamentary disposal of the property, it will go by rule of succession and the petitioner being the son will get his share. It is not in dispute that the brother of the petitioner was residing with him. It is also not in dispute that his nephew is living separately. There is all the possibility that the nephew would have claimed his share in the property and the petitioner does not want to give that share to him and to settle their disputes the petitioner is trying to avail criminal machinery. It may be a civil dispute and what the petitioner has stated is true, the petitioner could have filed a civil suit. If we go by the facts of the case, there appears all the possibility that the petitioner would not have been residing in the said premises. The petitioner is having another premises in Surat City where his wife is running a Vidya Mandir. Be that as it may be, if the Police Commissioner is not taking any action on the application of the petitioner, or in-charge of Mahidharpura Police Station is not registering the case, what for the petitioner is not filing the criminal complaint. This conduct of the petitioner creates suspicion. It is contended that once a cognizable offence is reported, the police has no option but to register the case and make the investigation. In support of this contention reliance is placed on the decision of this Court in Special Criminal Application No.468 of 2000 decided on 19th June 2000. Each case is to be decided on its own facts. After going through the judgement of this Court on which reliance is placed by the learned counsel for the petitioner, I am satisfied that in the facts of

that case the Court has given that decision. It cannot be accepted as a rule that where a complaint is filed by a person is to be registered and investigation is to be made by the police where as per the complainant a cognizable offence has been committed by the accused. In a case where though the complainant considers that a cognizable offence has been committed by the accused the police can refuse to register the case if it is satisfied that no case is made out. However, the approach of the Commissioner of Police, Surat City, and officer in-charge of the concerned Police Station deserves to be deprecated. Where the Police Commissioner or the Officer in-charge of the concerned Police Station consider that the complaint is got up or it cannot be registered and investigation cannot be made thereon, it has to be made known to the complainant in writing. In a country where rule of law is there, this approach of the police officers is not correct. The officer may have his own opinion but he has to give reply in writing to the complainant of his decision. Be that as it may, the petitioner is educated person. He is a teacher. His wife also appears to be an educated person, she runs a school. What for they are depending upon the police officers or Home Minister or Chief Minister? In our country, rule of law is there and if on the complaint of the petitioner no action has been taken by the police commissioner, Surat, or in-charge of the Mahidharpura Police Station, he could have approached the Judicial Magistrate concerned who has altogether a different complexion than the police officers. This is not done. Had it been really a serious case, then the petitioner should have approached to the Judicial Magistrate. From this approach of the petitioner, prima facie, I am of the opinion that he wants to settle civil disputes by way of filing this petition. It is a case where the dispute may relate and pertain to property and the petitioner could have gone to Civil Court. Not only that, the petitioner has also not impleaded his nephew as a party to the petition meaning thereby behind the back of him he wanted to get some order or direction favourable from the Court. This is wholly unreasonable approach of the petitioner.

In the result, this petition fails and the same is dismissed. However, dismissal of the petition will not come in the way of the petitioner from taking appropriate legal remedy available to him in accordance with law in the matter.

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